

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

FILED-CLERK
U.S. DISTRICT COURT
06 MAY 31 PM 4:07
TEXAS-EASTERN

KENNETH GARDNER

§

BY _____

VS.

§

CIVIL ACTION NO. 4:04cv317

DIRECTOR, TDCJ-CID

§

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Kenneth Gardner, an inmate confined at the Stiles Unit, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The court referred this matter to the Honorable Don D. Bush, United States Magistrate Judge, at Sherman, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition be dismissed as barred by limitations or, alternatively, denied on the merits.

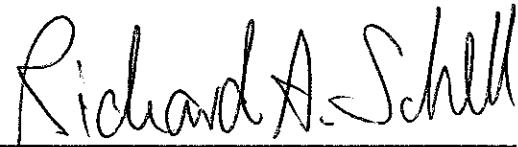
The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. See FED. R. Civ. P. 72(b).

After careful consideration, the court concludes Petitioner's objections should be overruled. While Petitioner contends the wrong dates were used for the filing dates of his prison grievances, the Magistrate Judge used the dates provided by Petitioner in his original petition. Petitioner has provided no evidence demonstrating his original statements were not correct. Further, as the Magistrate Judge concluded, the petition lacks merit and should be denied.

O R D E R

Accordingly, Petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

SIGNED this 31st day of May, 2006.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive style with a horizontal line underneath.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE